



Atty Gen. Op. No. 10 - TB14

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November 15, 2010

Colonel Gerald A. Lechliter (Ret.)
44 Harborview Rd.
Lewes, DE 19958

**RE: Freedom of Information Act Complaint
Against University of Delaware**

Dear Col. Lechliter:

On October 22, 2010, the Delaware Department of Justice ("DDOJ") received your complaint alleging the University of Delaware ("University") had violated the Freedom of Information Act, 29 *Del. C.* ch. 100 ("FOIA"), in refusing to provide you with public records. On October 29, 2010, we emailed your complaint to the University's attorney, requesting a response before November 4, 2010. We received a timely response from the University.

RELEVANT FACTS

By letter of August 5, 2010, you requested the University provide you with the following records:

all records, including e-mails, related to the Wind Turbine Project at the University's Lewes, DE, campus and any contemplated future follow-on projects such as shallow water energy production testing, a testing facility and research park on the same campus. These records include any internal and external communications especially with the U.S. Department of Energy (DoE) [*sic*], except for those

found at DoE's Website, state agencies and legislature, and the city of Lewes.

The University denied your request on the grounds that none of the requested records are public records within the meaning of FOIA, which provides that only those University documents that relate to the expenditure of public funds are public records. 29 *Del. C.* § 10002(d). Moreover, in its response to your complaint to the DDOJ, the University has determined that no "public funds," as the term is defined in FOIA, were used in support of the wind turbine project or to acquire property for the wind turbine project. 29 *Del. C.* § 10002(f).

RELEVANT STATUTES

The Delaware Freedom of Information Act was enacted to so that "citizens have easy access to public records in order that the society remain free and democratic."¹ 29 *Del. C.* § 10001. FOIA requires that the public must have "reasonable access to" public records for "inspection and copying." 29 *Del. C.* § 10003(a). However, the University's records are not public records unless "relating to the expenditure of public funds." 29 *Del. C.* § 10002(d). "Public funds are those funds derived from the State or any political subdivision of the State." 29 *Del. C.* § 10002(f).

DISCUSSION

No funds "derived from the State or any political subdivision of the State" were used for the wind turbine project. Therefore, without considering the meaning of "relating to" as it is used in 29 *Del. C.* § 10002(d), we can determine that University

¹ While FOIA refers throughout to "citizens," restricting the rights created by FOIA to only citizens of Delaware has been held unconstitutional. *Lee v. Minner*, 458 F.3d 194 (2006). Therefore, we will use the term "public" rather than "citizens."

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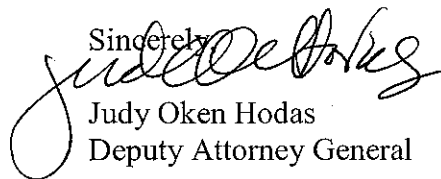
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documents related to the wind turbine project are not public records. You interpret "relating to the expenditure of public funds" to mean that because, as you allege, the land on which the wind turbine project is located was purchased with public funds, all records relating to the project are related to the expenditure of public funds. According to the University, no land was purchased to provide space for the wind turbine project. The fact that taxpayer money might have once been used to purchase land does not mean that subsequent uses of that land are related to the acquisition. The University's prior acquisition of the land, even if made with public funds, was unrelated to the wind turbine project. Your FOIA request asks only for records related to that project. Therefore, the records you requested are not "relating to the expenditure of public funds."

CONCLUSION

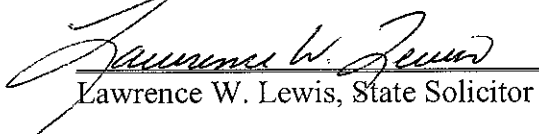
The University of Delaware did not violate FOIA when it declined to provide you with the records related to the Lewes wind turbine project.

Sincerely,



Judy Oken Hodas
Deputy Attorney General

Approved:



Lawrence W. Lewis, State Solicitor

cc: Opinion Coordinator
Lawrence White, Esquire